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In the Supreme Court of the United States

October Term 1928

THE SUPERIOR OIL COMPANY, Appellant

vs.

STATE OF MISSISSIPPI, ex rel.
RUSH H. KNNOX, Attornty General.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

STATEMENT OF JURISDICTION

W. H. WATKINS,
W. LEE GUICE.
Attorneys for Appellant.

In the Supreme Court of the United States

October Term 1928

No. 642

THE SUPERIOR OIL COMPANY, Appellant

vs.

STATE OF MISSISSIPPI, ex rel.
RUSH H. KNOX, Attorney General.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

STATEMENT OF JURISDICTION

Appellant submits, in compliance with Rule 12, Revised Rules of the Supreme Court of the United States, adopted June 5, 1928, the following statement of the basis of this Court's jurisdiction to review, on appeal, the judgment of the Supreme Court of the State of Mississippi.

A.

STATUTORY PROVISION SUSTAINING JURISDICTION.

The jurisdiction of this Court is invoked under Section 237 (a) Judicial Code, as amended by the Act of February 13, 1925, chapter 229, 43 Stat. 937, being section 344, Judicial Code, U. S. Code, Ann., title 28.*

B.

DATE OF JUDGMENT AND DATE OF APPLICATION FOR APPEAL.

The Decree of the Supreme Court of the State of Mississippi reversing the Decree of the Chancery Court of Harrison County, Mississippi, was entered on December 22nd, 1928 (R. 85).

The application for the appeal was presented January 2, 1929 (R. 105-107). The appeal was allowed on the 8th day of January, 1929 (R. 111).

C.

NATURE OF THE CASE AND RULINGS BELOW.

Section 2, Chapter 115, Mississippi Laws 1924 amending Section 2, Chapter 116, Mississippi Laws 1922 is as follows:

> "Sec. 2. Any person engaged in business of distributor of gasoline, or retail dealer in gasoline, shall pay for the privilege of engaging in such business an excise tax of three cents (3c) per gallon upon the sale of gasoline by such dealer in this state, except, however, such gasoline as is brought into this state and sold in original packages or otherwise in inter-state commerce, or such as is purchased outside of the state and brought into this state in original packages, or otherwise by the consumer for his own use shall not be taxed; nor shall any retail dealer be required to pay said excise tax when such tax may be paid by the distributor of gasoline, which may be sold at retail by such retailer.

*All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the Supreme Court of the State and on file with the Clerk of this Court. The record has not yet been printed.

"Nor shall the distributor pay such tax when the same is paid by the retailer."

Section 2, Chapter 119, Mississippi Laws of 1926 is as follows:

"Sec. 2. Any person engaged in the business of distributor of gasoline, or retail dealer of gasoline, shall pay for the privilege of engaging in such business an excise tax of four cents (4c) per gallon upon the sale of gasoline by such dealer in this state. No retail dealer shall be required to pay said excise tax when such tax may be paid by the distributor of gasoline, which may be sold at retail by such retailer, nor shall the distributor pay such tax when the same is paid by the retailer."

Section 3, Chapter 119, Mississippi Laws, 1926 is as follows:

"Sec. 3. This act shall not be construed to require the inclusion in the measure of tax of any gasoline when the same is exported from this state to another state or nation, nor to require the inclusion in the measure of tax any gasoline shipped in interstate commerce while the same is in transportation, but the gallonage of gasoline shipped or brought from another state or person into Mississippi shall be included in the measure of tax by the person first selling or using the same after it shall have been commingled with the general mass of property in this state. Provided, that distributors making shipments of gasoline into Mississippi, may, as a matter of convenience to purchasers located in Mississippi, assume and pay the tax herein imposed when permission so to do is first obtained from the state auditor of public accounts."

The State of Mississippi, through its Attorney General, filed suit in the Chancery Court of Harrison County, Mississippi to recover the tax provided in said Acts on gasoline sold by the appellant, (R. 3-8). The appellant, in its answer

claimed that the sales of gasoline made by it sought to be recovered in the suit consisted of shipments of gasoline made by appellant from the State of Mississippi into the State of Louisiana, and brought in controversy the above statutes, if applicable to said sales, as being in violation of the Commerce Clause of the Constitution of the United States (R. 12-17). The decision of the Chancery Court of Harrison County, Mississippi was in favor of the appellant and against the validity of the Act as applied to the sales made by appellant (R. 72). On appeal to the Supreme Court of the State of Mississippi by the State of Mississippi, the case was heard before Division B, and the judgment of the court below declaring the Acts invalid as to the sales in question was affirmed (R. 74). Opinion delivered by Ethridge, J. (R. 75-83). On suggestion of error the cause was remanded for re-argument before Division A (R. 83-84) upon the 22nd day of December, 1928, judgment was rendered setting aside the judgment entered in the court below, and sustaining the validity of the Acts of the Mississippi Legislature referred to and entering a judgment against the appellant for taxes sought to be recovered (R. 85). Opinion of the court, Anderson, J. (R. 86-95), dissenting opinion (R. 96-104). The effect of the judgment rendered by the Supreme Court of the State of Mississippi, appealed from, was a decision in favor of the validity of the Acts of the Mississippi State Legislature involved, against the assertion of the appellant of their invalidity as being in violation of the Commerce Clause of the Constitution of the United States.

D.

CASES SUSTAINING JURISDICTION

Harold B. Fisk, 274 U. S. 380, 71 L. ed. p. 1108.

Di Santo vs. Pennsylvania, 273 U. S. 34, 71 L. ed. 524.

Peoples Nat. Gas Co. vs. Public Service Com., 270 U. S. 550, 70 L. ed. 726.

Kansas City So. Ry. Co. vs. Road Improvement Dist., 266 U. S. 379, 69 L. ed. 335.

Shafer vs. Grain Co., 268 U. S. 189, 69 L. ed. 909.

Brooks vs. United States, 267 U. S. 432, 69 L. ed. 699.

Binderup vs. Pathe Exchange, 263 U. S. 291, 68 L. ed. 308.

Eureka Pipe Line Co. vs. Hallanan, 257 U. S. 265, 66 L. ed. 227.

Dahnke-Walker Milling Co. vs. Bondurant, 257 U. S. 282, 66 L. ed. 239.

Lemke vs. Farmers' Grain Co., 258 U. S. 50, 66 L. ed. 458.

Kenney vs. Sup. Lodge, 252 U. S. 411, 64 L. ed. 638.

Wagner vs. Covington, 251 U. S. 95, 64 L. ed. 157.

Penn Gas Co. vs. Public Service Com. 252 U. S. 23, 64 L. ed. 43.

U. S. vs. Simpson, 252 U. S. 465, 64 L. ed. 665.

Kansas City Steel Co. vs. State of Arkansas, 269 U. S. 148, 70 L. ed. 204.

William Truax, et al, vs. Corrigan, 257 U. S. 312, 66 L. ed. 254.

Standard Oil Co. vs. Graves, 249 U. S. 389, 63 L. ed. 662.

U. S. vs. Hill, 248 U. S. 420, 63 L. ed. 337.

Western Union Tel. Co. vs. Public Service Com. 247 U. S. 105, 62 L. ed. 1006.

Western Union Tel. Co. vs. Lipscomb, 244 U. S. 346, 61 L. ed. 118.

Penn. R. R. Com. vs. Sonman Shaft Coal Co., 242 U. S. 120, 61 L. ed. 188.

Rossi vs. Pennsylvania, 238 U. S. 62, 59 L. ed. 1201.

Kirmeyer vs. Kansas, 236 U. S. 568, 59 L. ed. 721.

Texas & N. O. Ry. Co. vs. Sabine Tram Co., 227 U. S. 111, 57 L. ed. 443.

Hanley vs. Kansas City So. Ry. Co., 187 U. S. 617, 47 L. ed. 333.

American Express Co. vs. Iowa, 196 U. S. 133, 49 L. ed. 417.

Hannibal Ry. Co. vs. Husen, 95 U. S. 465, 24 L. ed. 527.

Philadelphia Ry. Co. vs. Pennsylvania, 82 U. S. 232, 20 L. ed. 146.

Respectfully submitted,

W. H. WATKINS,

W. LEE GUICE.

Attorneys for Appellant.